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IN THE SUPREME COURT OF THE UNITED STATES

ESTHER KIOBEL, ET AL.,
PETITIONERS

v.

ROYAL DUTCH PETROLEUM CO., ET AL.,
RESPONDENTS

On Writ of *Certiorari* to the
United States Court of Appeals
for the Second Circuit

SUPPLEMENTAL BRIEF OF *AMICI CURIAE* INTERNATIONAL LAW SCHOLARS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI*

By Order of 5 March 2012, the Court restored this case to the calendar for reargument on a question with two parts: "[i] [w]hether and [ii] under what circumstances the Alien Tort Statute, 28 U.S.C. §1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States." International law is relevant to both parts of the question. *Amici* -- whose names and biographies appear in the Appendix – are some of the world's leading experts in the field of international law and human rights.[1] Although they come from many different countries with varying legal backgrounds, they share – and here submit -- a consensus position on the standards of international law that are necessarily implicated by the Court's question. Each signatory separately and all collectively offer an expertise on these issues that is not available from the parties themselves.

A substantial subset of the signatories to this brief appeared in this Court at an earlier phase of this case, arguing that the panel majority below committed reversible error in concluding that jurisdiction under the Alien Tort Statute does not extend to corporations in any circumstances. Specifically *amici* argued that the panel majority below found restrictions on American

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel contributed money to the preparation or submission of this brief. The parties have consented to this filing.

jurisdiction that do not exist under international law and ignored limits on corporate action that do. Because the extraterritoriality question was not raised by the parties or the courts below, *amici* have not previously been heard on the international law issues now present in the case.

It is well-established that this Court determines the content of international law by reference "to the customs and usages of civilized nations, and, *as evidence of these, to the works of jurists and commentators.*" *The Paquete Habana*, 175 U.S. 677, 700 (1900) (emphasis supplied). *See also* AMERICAN LAW INSTITUTE, RESTATEMENT (THIRD) U.S. FOREIGN RELATIONS LAW, §103(2)(c) (1987) ("In determining whether a rule has become international law, substantial weight is accorded to . . . the writings of scholars. . . .")

SUMMARY OF ARGUMENT

The courts of the United States have long recognized a cause of action under the Alien Tort Statute ("ATS") for violations of the law of nations occurring within the territory of another sovereign state, subject of course to case-by-case considerations like personal jurisdiction, *forum non conveniens*, comity, and other limitations on the exercise of jurisdiction that may apply in *any* transnational case. So long as the underlying cause of action in an ATS case rests on specific, universal, and obligatory norms of international law, nothing in international law prohibits

the exercise of remedial jurisdiction in so-called "extraterritorial" or "foreign-cubed" cases; indeed, this Court has cited with apparent approval a line of cases that took precisely that approach. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004) (citing *inter alia* *Filartiga v. Pena-Irala*, 630 F. 2d 876 (2d Cir. 1980) (alien suing alien for violations of international law that occurred in foreign country)). In contrast to the imposition of substantive U.S. law abroad, which is sometimes a violation of international jurisdictional norms, this line of ATS cases has been recognized and respected as an enforcement of international law -- a domestic remedy for a violation of a modest number of substantive international standards.

The argument to the contrary has been rejected by every court to which it has been presented. The reasons for that remarkable unanimity over three decades are neither obscure nor subtle: (i) the statute by its terms does not specify the citizenship of the defendant or the locus of the injury; (ii) *Sosa*-qualified norms cannot qualify as the kind of domestic law to which international limits on prescriptive jurisdiction apply; (iii) the transitory tort doctrine, on which *Filartiga* and its progeny partially rest, is fully consistent with the international norm that every state retains the sovereign authority to resolve disputes that are brought within its territory by the presence of the defendant; (iv) the ATS as interpreted and applied is consistent with the international obligation of the United States to provide a meaningful remedy for

egregious violations of international human rights law and to prevent its territory from routinely becoming a safe haven for abusers; and (v) even if the ATS were an exercise in jurisdiction to prescribe, the restrictive international standards governing such jurisdiction do not apply when norms within each State's universal jurisdiction are involved.

A new judicially-created rule that the ATS does not extend to violations of the law of nations in foreign nations not only rewrites the statute and overturns *Filartiga* and its progeny, it is completely unnecessary: the courts of the United States have developed numerous case-specific doctrines to ensure respect for foreign sovereigns and international law. Nothing in international law takes these prudential tools out of the courts' hands, and these doctrines remain available to dispose of litigation with insufficient connections to the United States. In contrast to Constitutional limitations which might also derail ATS litigation – like the due process requirements of personal jurisdiction -- these case-by-case considerations do not create *per se* barriers to ATS litigation and should not be interpreted to do so without an indication from Congress even hinting that the *Filartiga-Sosa* line of cases is wrong.

ARGUMENT

I. Nothing in International Law Prohibits the Alien Tort Statute from Providing a Domestic Remedy for Violations of International Law, Even When Those Violations Occur Within the Territory of Another State.

International law does not invalidate the extension of the ATS to torts in violation of international law that occur in the territory of foreign States. To the contrary, international law establishes and protects the sovereign authority of every State to adopt domestic remedies for particularly egregious violations of the "law of nations or a treaty of the United States." This remedial exercise distinctly does not involve the application of substantive U.S. law abroad: the conduct being defined and regulated is not controlled by U.S. law such as might trigger concerns with international limits on the jurisdiction to prescribe, *i.e.* "the authority of a state to make *its* substantive laws applicable to particular persons and circumstances." AMERICAN LAW INSTITUTE, RESTATEMENT (THIRD) U.S. FOREIGN RELATIONS LAW (1987) ("RESTATEMENT THIRD"), at Part IV, intro. note (emphasis supplied).

In the eighteenth century, the First Congress was acting consistently with the sovereignty principle when it adopted the ATS with the background understanding that it might in principle apply to conduct that occurred in foreign territories. In the

twenty-first century, the international legality of the ATS has become even clearer, as a respected example of the obligation of States to provide a meaningful remedy for the violation of universal norms of international law. The absence of equivalent domestic arrangements in other countries is irrelevant as a matter of law, even if it were true as a matter of fact.[2] In a case before the Permanent Court of International Justice (precursor to the current International Court of Justice), the Court rejected an argument by the government of France that Turkey could not apply its criminal law to a collision on the high seas because other States had not done so:

> Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove the circumstance alleged by the French government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so.

The Lotus Case, [1927] P.C.I.J., Ser. A, No. 10, at 19. The essential lesson from *Lotus* is methodological: a sovereign need not look to international law for permission to act, and the absence of similar arrangements in other countries does not create a prohibitory rule. Other States' abstention from a

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[2] Petitioner has already demonstrated that the domestic law of other countries does support the possibility of obtaining compensation for tortious conduct that occurs in the territory of another country, whether that conduct violates international law or not. *See* Petitioners' Supplemental Opening Brief, *Kiobel v. Royal Dutch Petroleum Co.* (No. 10-491 (filed June 6, 2012), at 44-48.

practice is merely evidence of its rarity, not its illegality.[3]

A. The ATS As Interpreted in *Sosa* and Applied in *Filartiga* and Its Progeny Never Involves the Extraterritorial Application of Substantive U.S. Law in Violation of International Law.

This Court's decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), forecloses the argument that the ATS cannot in any circumstances allow courts to recognize a cause of action for conduct that occurs in the territory of another State. As a purely "jurisdictional statute," 542 U.S. at 724,[4] the ATS does not authorize the making of substantive U.S. law, let alone its application abroad. That fundamentally distinguishes the ATS from the substantive American laws denied extraterritorial effect in such cases as *Boureslan v. Arabian American Oil Co.*, 499 U.S. 244 (1991) (anti-discrimination laws); *Morrison v. National Australian*

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[3] It is true that the PCIJ was addressing the application of Turkish law on the high seas, not as in ATS cases, the application of international law in the territory of a foreign sovereign, but that distinction actually strengthens the Petitioners' position in this case, not the Respondents'. International law prohibits egregious conduct that is of concern to all nations, and States are empowered, indeed in some cases required, to craft remedies appropriate to their individual justice systems. See Part I(C), *infra*. In these circumstances, unlike Turkey's position in *Lotus*, States are not applying their own domestic legal standards to extraterritorial conduct.

[4] *See also id.*, at 729 ("All Members of the Court agree that § 1350 is *only* jurisdictional") (emphasis supplied).

Bank, 130 S. Ct. 2869 (2010) (securities regulation); and *Foley Brothers Inc. v. Filardo*, 336 U.S. 281 (1949) (labor law). These cases rejected the projection of substantive U.S. regulation into foreign territories and held that U.S. standards could not govern foreign conduct by foreigners in the absence of a clear Congressional directive to the contrary.

The contrast with ATS cases could not be starker: the very essence of the *Sosa* decision is that the federal courts are forbidden to create substantive U.S. law. *Id.*, at 729. After *Sosa*, the applicable standard of conduct in ATS cases *must* be the law of nations -- a "specific, *universal*, and obligatory"[5] norm of international law -- not U.S. law. Thus in *Filartiga*, the underlying claim was for torture, a violation of the law of nations. United States law was relevant not to establish the illegality of the foreign conduct, *cf. Boureslan, Morrison, and Foley, supra*, but to provide remedial jurisdiction in accordance with the literal terms of the ATS:[6]

> It is only where the nations of the world have demonstrated that the wrong is of mutual, and not merely several, concern, by means of express

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[5] *Id.*, at 732 (quoting *In re Estate of Marcos Human Rights Litigation*, 25 F.3d 1467, 1475 (9th Cir. 1994)) (emphasis supplied).

[6] For precisely this reason, the *Foley Brothers* presumption against the extraterritorial application of substantive U.S. law does not apply to other statutory grants of subject matter jurisdiction codified with the ATS in Title 28, like 28 U.S.C. §1332 (diversity jurisdiction) or 28 U.S.C. § 1331 (federal question jurisdiction). *See Doe v. Exxon Mobil*, 654 F.3d 11, 23 (D.C. Cir. 2011).

> international accords, that a wrong generally recognized becomes an international law violation within the meaning of the statute.

630 F. 2d, at 888. Under *Sosa*, federal common law comes in not as a substantive regulation applied abroad but as the recognition of a cause of action that is defined by the law of nations and applicable generally.

In short, the argument that international law prohibits the extension of the ATS to violations that arise in foreign countries fundamentally confuses the application of substantive U.S. law abroad, which is sometimes a violation of international jurisdictional norms, with the provision of a domestic remedy for violations of international law abroad, which is not similarly limited so long as the defendant is within the personal jurisdiction of the court. In the terminology of international law, Respondents' restrictive argument rests on internationally-agreed limitations on a State's "jurisdiction to prescribe," which as noted above is "the authority of a state to make *its* substantive laws applicable to particular persons and circumstances." RESTATEMENT THIRD, at Part IV, intro. note (emphasis supplied). But *Sosa*-qualified norms authorize federal courts to remedy particularly egregious violations of *international* law. The ATS after *Sosa* can never "prescribe" U.S. law, and the general limitations on jurisdiction to prescribe are irrelevant to such remedial jurisdiction. The correct international analogy is the "jurisdiction to adjudicate," RESTATEMENT THIRD, § 421, which, is the power of a State to "subject persons or

things to the process of its courts . . . whether in civil or criminal proceedings." RESTATEMENT THIRD, § 401(b). Like Constitutional standards of due process, the international standards governing jurisdiction to adjudicate establish when personal jurisdiction in a domestic court is proper.

This distinction between remedial and prescriptive jurisdiction is fundamental and accounts in part for the fact that *every* court presented with the argument that the ATS cannot apply to wrongs committed in foreign territory has rejected it, both before[7] and after[8] *Sosa*.

Sosa itself was a "foreign-cubed" case, with one alien – Dr. Alvarez-Machain -- suing another alien – Francisco Sosa -- under the ATS for an alleged violation of international law that occurred in the territory of another State. The extraterritoriality objection was squarely presented to the Court *inter alia* by the government of the United States appearing *amicus curiae*,[9] and ignored. Nothing in this Court's analysis of

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[7] *See, e.g., Filartiga*, 630 F.2d at 885-86; *Trajano v. Marcos*, 978 F.2d 493, 499-501 (9th Cir. 1992) ("We are constrained by what § 1350 shows on its face: no limitations as to the citizenship of the defendant *or the locus of the injury*") (emphasis supplied).

[8] *See e.g., Sarei v. Rio Tinto, PLC*, 671 F.3d 736, 745-47 (9th Cir. 2011) (*en banc*); *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 20-28 (D.C. Cir. 2011); *Flomo v. Firestone Nat. Rubber Co., LLC*, 643 F.2d 1013, 1025 (7th Cir. 2011).

[9] *See* Brief for the United States as Respondent Supporting Petitioner, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (Nos. 03-339, 03-485), 2004 WL 182481, at 46-50; Reply Brief for the United

the ATS – as distinct from the Federal Tort Claims Act -- turned on this fact; indeed, the Court's ATS analysis would be inexplicable if territoriality were a dispositive concern. Certainly, the "reasons ... for judicial caution, *id.*, at 725 *et seq.*, and the possible requirement that local remedies be exhausted, *id.*, at 733 n. 21, would be superfluous if "foreign-cubed" cases were out of bounds altogether. And the Court's approval of *Filartiga* and the subsequent "foreign-cubed" cases relying on it would be especially bizarre. *Sosa*, 542 U.S. at 732 (citing *Filartiga v. Pena-Irala*, 630 F. 2d 876 (2d Cir. 1980) (alien suing alien for violations of international law that occurred in foreign country), *Kadic v. Karadzic*, 70 F. 3d 232 (2d Cir. 1995) (same), and *In re Estate of Marcos Human Rights Litigation*, 25 F.3d 1467, 1475 (9th Cir. 1994) (same)).

After *Sosa*, ATS actions can be viewed in principle only as remedial applications of substantive international law, not as violations of international law themselves. Certainly no nation objected to *Filartiga* or *Karadzic* or *Marcos* -- the three paradigmatic cases cited with approval in *Sosa*. Over the decades, some governments, like Zimbabwe under President Robert Mugabe, have successfully objected to particular ATS cases involving their officials, on immunity grounds rather than territoriality. *See, e.g. Tachiona v. Mugabe*,

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States as Respondent Supporting the Petitioner, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (Nos. 03-339, 03-485), 2004 WL 577654, at 19-20.

234 F. Supp. 2d 401 (S.D.N.Y. 2002) (ATS case dismissed on grounds of head-of-state immunity). But these occasional, generally political objections offer no evidence that international law bars all remedies under the ATS for foreign-based conduct; indeed, as shown in Petitioners' Supplemental Opening Brief in this case, the provisions of other States' domestic law clearly allow such actions, including the countries whose governments have previously appeared as *amici* in this case in support of Respondents. *See* Petitioners' Supplemental Opening Brief, *Kiobel v. Royal Dutch Petroleum Co.* (No. 10-491 (filed June 6, 2012), at 44-48.

Some of Respondents' *amici* have previously focused on the extraterritorial application of the ATS and argued that *Filartiga* and its progeny violate international law. *See e.g.*, Brief of Chevron Corp. et al, as Amicus Curiae in Support of Respondents (No. 10-1491) (filed Feb. 3, 2012) ("*Chevron Amicus Brf.*"). But these submissions utterly miss the foundational distinction between prescriptive and adjudicatory or remedial jurisdiction, and rest instead on international standards governing sovereign immunity and related doctrines, *Chevron Amicus Brf.* at 6-10, which simply are not at issue in this case.

For example, in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 2002 I.C.J. 3 (Feb. 14), the International Court of Justice ("ICJ") held that Belgium had violated *immunity* doctrines by issuing an arrest warrant for a

sitting foreign minister of The Congo. Similarly, in *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*, Judgment, 2012 I.C.J. (Feb. 3), the ICJ held that suits in Italian courts against the German government for violations of humanitarian law during World War II violated Germany's sovereign *immunity*. And in *Jones v. Ministry of Interior of Kingdom of Saudi Arabia*, [2006] UKHL 26, [2007] 1 A.C. (H.L.) 270, the British court dismissed a torture suit against a foreign nation on grounds of sovereign *immunity*, exactly as American courts would do under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1601 *et seq.* ("FSIA").

That these cases cannot stand the weight Respondents' *amici* put on them is clear from the fact that this Court has already determined that the ATS is not a vehicle for suing foreign sovereigns, *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989), and that individual officials sued under the ATS are not entitled to sovereign immunity under the FSIA in the first place, *Samantar v. Yousuf*, 130 S.Ct. 2278 (2010). The sovereign immunity concerns at the heart of Chevron's *amicus* submission, even as expressions of international law, simply do not support, let alone require, a blanket prohibition against ATS cases based on foreign conduct.[10]

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[10] In addition, contrary to *amici*'s assertion, *Chevron Amicus Brf.*, at 6-7, three judges in an International Court of Justice concurrence actually lent international law support for the use of ATS cases to

Amici also argue, *Chevron Amicus Br.*, at 29, that a territorial limitation on ATS jurisdiction is required by the principle that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. . . . " *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). But the argument begs the question to be decided. Certainly for much of its doctrinal life, the *Charming Betsy* principle has been used to reinforce the *Foley Brothers* presumption against the extraterritorial application of U.S. substantive law. But, as noted *supra*, that is not something the ATS can do after *Sosa*. And if the ATS is used to enforce universal standards of international law, as *Sosa* requires, then the *Charming Betsy* principle not only doesn't limit ATS jurisdiction territorially, it reinforces the propriety of the *Filartiga* line of cases.

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redress grave human rights abuses, even when those abuses occurred outside a state's territorial jurisdiction. Although noting that other countries had yet to adopt similar legislation, Judges Buergenthal, Higgins, and Kooijmans stated that the international community's determination to punish those who commit international crimes gives national courts a significant role to play.

> We reject the suggestion that the battle against impunity is "made over" to international treaties and tribunals, with national courts having no competence in such matters. Great care has been taken when formulating the relevant treaty provisions not to exclude other grounds of jurisdiction that may be exercised on a voluntary basis.

Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Joint Separate Op., 2002 I.C.J. 63, 77 ¶ 51 (Feb. 14) (separate opinion of Judges Higgins, Kooijmans, and Buergenthal). It bears repeating that the *Lotus* principle, *supra*, does not allow the inference of illegality from a failure of "approbation." *Id.*, at ¶48. *Chevron Amicus Br.*, at 7.

Equally unavailing is the related argument that ATS causes of action based on extraterritorial conduct violate the "exclusive and absolute" jurisdiction of a nation within its own territory. *Chevron Amicus Brf.*, at 10 (citing *Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812)). But the argument is a stunning anachronism: contemporary international human rights law rejects the right of states to commit genocide, war crimes, or crimes against humanity with impunity under cover of territorial sovereignty. The reason that *Filartiga* and its progeny have consistently rejected *amici*'s argument is that governments do not claim human rights violations as official acts, reflecting sovereign policy. Violations of international law can be no act of sovereignty entitled to protection under international law. And even if they were, the United States has rejected the doctrine of absolute and inviolable sovereignty for decades, and certainly since the adoption of the FSIA. It would undermine the international human rights regime if nations were free to commit terrorism, torture, or slavery so long as they only targeted those within their own borders.

B. The Transitory Tort Doctrine, Which Lies at the Heart of the Alien Tort Statute as Interpreted in *Filartiga*, Does Not Violate International Law.

The *Filartiga* court held that the ATS provides a forum for cases involving conduct in foreign territory that violates the "law of nations or a treaty of the United States" and was careful to demonstrate that the domestic adjudication of tortious conduct occurring abroad was neither new nor extraordinary. The court located ATS actions within the tradition of transitory torts at common law. As noted by the *Filartiga* court,

> [c]ommon law courts of general jurisdiction regularly adjudicate transitory tort claims between individuals over whom they exercise personal jurisdiction, wherever the tort occurred. * * * Thus, Lord Mansfield in *Mostyn v. Fabrigas*, 1 Cowp. 161 (1774), quoted in *McKenna v. Fisk*, 42 U.S. (1 How.) 241, 248, 11 L.Ed. 117 (1843) said:
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> > [I]f A becomes indebted to B, or commits a tort upon his person or upon his personal property in Paris, an action in either case may be maintained against A in England, if he is there found . . . . [A]s to transitory actions, there is not a colour of doubt but that any action which is transitory may be laid in any county in England, though the matter arises beyond the seas.

630 F.2d at 885. The authorities in support of this proposition are ancient,[11] and, even if they weren't, this Court has repeatedly recognized that tort actions are transitory under U.S. law in ways that criminal proceedings and real property cases are not.[12]

In the thirty-two years since *Filartiga* was announced, not a single court has questioned the relevance of the transitory tort doctrine in analyzing the reach of the ATS. The consequence is that the burden of justification rests on those who would now carve out some exception to the transitory tort doctrine for that subset of torts that are in violation of international law. That burden is apparently insurmountable, perhaps

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[11] *See, e.g., Mostyn v. Fabrigas*, 1 Cowp. 177, 96 Eng. Rep. 1021 (1774) ("the place of transitory actions is never material, except where by particular acts of Parliament it is made so . . ."); *Dutton v. Howell*, 1 Eng. Rep. 17, 21 (H.L. 1693); *Cartwright v. Pettus*, 2 Eng Rep. 916 (Ch. 1675). *See also* 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 384 (1758) ("*all over the world*, actions transitory follow the person of the defendant") (emphasis supplied); JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS, §§ 543, 554 (1846) ("by common law personal actions, being transitory, may be brought in any place, where the party defendant may be found.")

[12] *See, e.g., McKenna v. Fisk*, 42 U.S. 241, 248-9 (1843) ("the courts in England have been open in cases of trespass other than trespass upon real property, to foreigners as well as to subjects, and to foreigners against foreigners when found in England, for trespasses committed within the realm and out of the realm, or within or without the king's foreign dominions."); *Dennick v. Central R. Co. of New Jersey*, 103 U.S. 11, 18-19 (1880) ("[i]t *is no objection* that all the parties to the suit are aliens or non-residents, and *that the cause of action arose abroad*.") (emphasis supplied).

because no court can swallow the perversity of treating common torts as transitory but denying similar treatment to torts in violation of international law. The fact that there are now international proscriptions of tortious acts that constitute torture or extra-judicial killings for example does not make them any less transitory.

It is true that the law defining the tortious conduct in garden-variety transitory actions tends to be the law of the *situs* --the place where the conduct occurs. But it is formalism run rampant to conclude from that choice-of-law truism that ATS cases based on foreign conduct are categorically barred.[13] *Sosa*-qualified norms arise only out of specific, *universal*, and obligatory standards of international law, so there must be a substantial convergence among U.S., foreign, and international law prohibiting certain conduct. If there is insufficient uniformity to allow the inference of an international norm, then the statute's jurisdictional requirements as laid out in *Sosa* will not be satisfied. For example, if the foreign State's law reflects a generalized disagreement over international standards, then no specific, universal, and obligatory norm exists, and federal jurisdiction in U.S. courts, if any, would have to rest on some statutory ground other than the ATS. But when the law of the *situs* is fully consistent with international standards, the ATS simply assures a federal forum for that subset of transitory torts that

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[13] *See Chevron Amicus Br.*, at 15, n.7.

implicate the national interest in the law of nations or a treaty of the United States.

That the ATS would cover transitory wrongs committed abroad is clear from the opinion of Attorney General William Bradford in 1795, *Breach of Neutrality*, 1 OP. ATT'Y GEN. 57 (1795), an opinion cited with approval by this Court in *Sosa*. 542 U.S., at 721. Writing soon after the enactment of the ATS, the Attorney General was asked to consider the potential liability of U.S. citizens who had aided certain French citizens in attacking the British colony within the territory of Sierra Leone, in violation of the state-to-state obligation of neutrality. Reflecting eighteenth-century conflicts-of-law principles (sometimes labeled "private international law"), Bradford explicitly rejected the argument that U.S. criminal law could apply extraterritorially. In contemporary terminology, the United States did not have jurisdiction to prescribe its criminal law in the circumstances of the case. But he also concluded that torts in violation of the law of nations would be remediable under the ATS applying international standards, without any additional statutory permission from Congress:

> [T]here can be *no doubt* that the company or individuals who have been injured by these acts of hostility have a remedy by a civil suit in the courts of the United States: jurisdiction being expressly given to these courts in all cases where an alien sues for a tort only, in violation of the law of nations. . . .

1 OP. ATT'Y GEN. 57, 59 (1795) (emphasis supplied).[14]

C. The Exercise of Remedial Jurisdiction for Violations of International Law Abroad Is Consistent with International Law Requiring Effective Remedies for Violations of Human Rights Standards.

The United States, like all nations, is under an international obligation to provide a remedy for egregious international wrongs. The right to a remedy for conduct that violates human rights is recognized in Article 2(3) of the International Covenant on Civil and

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[14] It is true that elsewhere in his opinion, the Attorney General says "[s]o far, therefore, as the transactions complained of originated or took place in a foreign country, they are not within the cognizance of our courts; nor can the actors be legally prosecuted or punished for them by the United States." But this passage occurs in the context of his analysis of *criminal* jurisdiction, namely that violations in the territory of the United States may be criminally prosecuted here, that violations of U.S. criminal law in foreign countries may not be prosecuted here, and that violations on the high seas are problematic given the text of the Neutrality Act. After this discussion of criminal jurisdiction, Bradford turns to civil jurisdiction and expresses "no doubt" about the reach of the ATS. If Respondents or their *amici* now insist that the ATS actions envisioned by Bradford could only be brought against a U.S. citizen involved in the attack and not a French citizen within the personal jurisdiction of U.S. courts, then they concede that the ATS *does* apply to foreign conduct – acknowledging an affirmative answer to this Court's first question in its March 5th Order and offering an initial position on the "circumstances" under which that jurisdiction is proper, the Court's second question.

Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, to which the United States is a party:

> Each State Party to the present Covenant undertakes: (a) To ensure that *any* person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity....

There is no territorial limitation on the obligation to provide a remedy for violations of international law;[15] indeed, the United States government has repeatedly assured the international community that the ATS as interpreted in *Filartiga* and its progeny reflects this nation's commitment to international remedies for extraterritorial conduct:

> U.S. law provides statutory rights of action for civil damages for acts of torture occurring *outside* the United States. One statutory basis for such suits, the [ATS] . . . represents an early effort to provide judicial remedy to individuals whose rights had been violated under international law.

U.N. Committee against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: United States of America*, U.N. Doc.

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[15] *See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), and U.N. Commission on Human Rights, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment*, U.N. Doc. E/CN.4/1996/29/Add.2 (1996), at ¶ 15.

CAT/C/28/Add.5 (Feb. 9, 2000), at para. 277 (emphasis supplied).[16] Ever since the U.S. government's seminal submission to the Second Circuit in the *Filartiga* litigation, there has been no doubt that the ATS – even in "foreign-cubed" cases -- was one way that this nation's remedial obligations were fulfilled.[17] *See generally* Donald Francis Donovan & Anthea Roberts, *The Emerging Recognition of Universal Civil Jurisdiction*, 100 AM. J. INT'L L. 142 (2006).

This remedial obligation has also been articulated by the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, who noted in 2009:

> As part of their duty to protect, States are *required* to take appropriate steps to investigate, punish, and redress corporate-related abuse of the rights of individuals within their territory

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[16] There is no suggestion in this assurance to the international community that the remedy is available only when the U.S. government is responsible for the underlying violation. In fact, the only remedy against the United States in those circumstances lies under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), which *Sosa* established does *not* apply to cases that arise out of conduct in foreign countries.

[17] *See Memorandum for the United States as Amicus Curiae, Filartiga v. Pena Irala*, (2d Cir. 1980), reprinted in 19 INT'L LEG. MATS. 585, 601-602, 604 (1980) ("a refusal to recognize a private cause of action in these circumstances might seriously damage the credibility of our nation's commitment to the protection of human rights.") *See also Statement of Interest of the United States, Kadic v. Karadzic*, No. 94 9035 (2d Cir. 1995) (affirming the remedial reach of the ATS for wrongs committed in foreign territory).

> *and/or jurisdiction* – in short, to provide access to remedy.

Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, ¶ 87, U.N. Doc. A/HRC/11/13 (Apr. 22, 2009) (emphasis supplied). The Special Representative recently confirmed these principles – with governments' approval – in his Guiding Principles on Business and Human Rights, which explicitly recognized a State's positive obligation to provide a remedy for corporate abuses that may, but need not, have occurred within their territories.[18] Thus is the original issue in this case (whether the ATS includes the possibility of corporate liability) linked to the supplemental issue (whether the ATS applies to foreign conduct) in a way that fully support the Petitioner on both issues.

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[18] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31 (March 21, 2011), at Art. 25 ("As part of their duty to protect against business-related human rights abuse, States *must* take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur *within their territory and/or jurisdiction* those affected have access to effective remedy") (emphasis supplied).

D. Even If the ATS Were an Exercise in Jurisdiction to Prescribe, the Restrictive International Standards Governing Such Jurisdiction Do Not Apply In Any Case Where Norms Within Each State's Universal Jurisdiction Are Involved or Defendants are U.S. Citizens.

If this Court concludes, in spite of *Sosa*, that the ATS implicates the jurisdiction to prescribe, it should still reject a categorical bar to litigation arising out of foreign conduct. At the threshold, the principle of sovereignty assures that the United States enjoys wide discretion in extending its substantive law abroad. As the Permanent Court of International Justice stated:

> [F]ar from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to the persons, property, and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules.

The Lotus Case, [1927] P.C.I.J., Ser. A, No. 10, at 19. Consistent with that understanding, the RESTATEMENT (THIRD), *supra*, identifies multiple bases for jurisdiction to prescribe, two of which are dispositive in this case: a State has jurisdiction to prescribe in principle with respect to (i) "the activities ... of its nationals *outside as*

well as within its territory," *id.*, at § 402(2),[19] and (ii) "certain offences recognized by the community of nations as of universal concern," *id.*, at § 404.[20]

Under these standards, the ATS is plainly available to aliens injured by torts in violation of the law of nations committed by natural and juridical individuals who are U.S. nationals, wherever those violations occur. That after all is the circumstance in which Attorney General Bradford expressed "no doubt" about the reach of the ATS in 1795, *Breach of Neutrality*, *supra*, and no court has questioned that conclusion. Similarly,

> jurisdiction on the basis of universal interests has [generally] been exercised in the form of criminal law, but international law does not preclude the application of non-criminal law on this basis, for example, by providing a remedy in tort or restitution for victims of piracy.

RESTATEMENT (THIRD), at § 404, cmt. b.

Consistent with the sovereignty principle of the *Lotus* case, *supra*, the United States has embraced the use of the ATS as a civil remedy for egregious violations of norms that must be universal *under Sosa itself*. For

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[19] The exercise of this jurisdiction in any given case must be "reasonable," § 403(1), and that is determined on an individual case-by-case basis, using the list of factors laid out in § 403(2)(a)-(h).

[20] In contrast to nationality-based jurisdiction under § 402, universal jurisdiction under § 404 is not subject to the affiliation factors listed in § 403, because the gravity of the wrongs within the universality principle makes every state an agent in its suppression and remediation.

example, in language that accurately summarized the standards of international law, the *Filartiga* court concluded that "for purposes of civil liability, the torturer has become – like the pirate and slave trader before him -- *hostis humani generis*, an enemy of all mankind." 630 F.2d, at 890. Since 1980, governments, courts, international tribunals, and scholars have all recognized the universal condemnation of human rights violations in addition to torture: extra-judicial executions, prolonged arbitrary detention, and crimes against humanity, *inter alia*. From this perspective, the ATS cannot cover international claims for routine libel or tortious interference with business relations, because these wrongs are not subject to universally-agreed standards. The contrast with the fundamental human rights violations alleged in this case – and *required* to be pled under *Sosa* -- could not be clearer.

II. Case-by-Case Considerations May Derail ATS Cases with Inadequate Connections to the United States Without Violating International Law, But They Should Not Be Converted Into *Per Se* Barriers to Actions That Fit the *Filartiga-Sosa* Paradigm.

An absolute bar to ATS liability for conduct that occurs in foreign territory, utterly without guidance from Congress or the Executive Branch, goes well beyond caution or prudence. It is in effect a solution to

no problem that cannot be resolved in less categorical ways, none of which is blocked by international law.

A. Nothing in International Law or the ATS Overrides the Law of Personal Jurisdiction in the United States.

Nothing in international law or the ATS can dispense with or override the Constitutional requirement that the defendant have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).[21] This is consistent with the international standards governing jurisdiction to adjudicate, RESTATEMENT THIRD § 421, and erects a substantial filter that can screen out ATS cases that are not properly in the United States. *See, e.g., Doe v. Unocal Corp.*, 248 F.3d 915, 930–31 (9th Cir. 2001). On the other hand, if the defendant does meet the Constitutional standards, as for example in

[21] Corporations are entitled to due process protections in this regard, as this Court has made clear repeatedly. *See e.g., Helicopteros Nacionales de Colombia, S.A. v.* Hall, 466 U.S. 408 (1984); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011); *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2790 (2011). In general, personal jurisdiction over corporate defendants can be satisfied only if the corporate defendant is engaged in substantial business in the United States or if the particular claim arises from its contacts with the forum.

Filartiga, *Karadzic*, *Marcos*, and *Wiwa*, *infra*, then its legal "presence" in the United States can trigger both the transitory tort doctrine, *supra*, and the sovereign interest of the United States in resolving disputes that have been brought within its territory.

B. Nothing in International Law or the ATS Overrides the Doctrine of *Forum Non Conveniens*.

Subject only to the obligation to provide a remedy, *supra*, international law allows domestic courts to dismiss cases that more properly belong in another jurisdiction. In the United States and many other common law jurisdictions, the doctrine of *forum non conveniens* provides a common form of judicial abstention in cases more properly litigated in a foreign jurisdiction. The doctrine may in certain well-defined circumstances derail ATS litigation with insufficient connections to the United States. According to this Court's decision in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981),

> when an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would establish ... oppressiveness and vexation to a defendant ... out of all proportion to plaintiff's convenience, or when the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems, the court may, in the exercise of its

> sound discretion, dismiss the case, even if jurisdiction and venue are established.

454 U.S. at 241. *See also American Dredging Co. v. Miller*, 510 U.S. 443, 447-48 (1994). Specifically, *Piper* requires a two-step process, fully consistent with international law: (i) the court must determine if an adequate alternative forum for the resolution of the dispute exists, and (ii) assuming that an adequate alternative forum exists, the court must balance a constellation of factors involving the private interests of the parties and any public interests that may be at stake, including *inter alia* "the relative ease of access to sources of proof" and the "local interest in having localized controversies decided at home." *Id.*

These public and private factors are directly responsive to the concern that some ATS cases belong in some foreign court.[22] The fact-dependency of these considerations makes *forum non conveniens* a flexible option, lawful under international law and preferable to any categorical bar to jurisdiction, especially when there is no adequate alternative forum.[23] The invocation of the doctrine in an ATS case would violate international

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[22] Some ATS cases have been dismissed on precisely these grounds. *See, e.g., Aguinda v. Texaco, Inc.*, 303 F.3d 470, 473 (2d Cir. 2002); *Mastafa v. Australian Wheat Bd.*, No. 07-cv-7955, 2008 WL 4378443 (S.D.N.Y. Sept. 25, 2008); *Aldana v. Del Monte Fresh Produce N.A.*, 578 F.3d 1283 (11th Cir. 2009).

[23] *See e.g. Wiwa v. Shell Petroleum Corp.*, 226 F.3d 88 (2d Cir. 2000), *cert denied*, 532 U.S. 941 (2001); *Licea v. Curacao Drydock Co., Inc.*, 537 F. Supp. 2d 1270, 1274 (S.D. Fla. 2008). The doctrine may not apply at all if Congress has given the federal courts a particular responsibility to implement federal law, in which case that duty may outweigh factors of convenience. *Wiwa, supra.*

law if that effectively foreclosed a remedy for a violation of *Sosa*-qualified norm. Otherwise, it remains an adequate and well-defined safety valve for ATS cases that properly belong someplace other than U.S. courts.

C. Nothing in International Law or the ATS Overrides the Comity Doctrine or the Executive Branch's Privileged Voice in Purely Political Matters Involving Foreign Relations.

One recurring theme in the argument that the ATS cannot apply to foreign acts is that, without that categorical bar, the foreign affairs of the United States or the comity of nations would be compromised. The argument takes various forms, but commonly rests on the assertion that such litigation requires the courts of the United States to judge the legality of a foreign government's official acts. But there are multiple discretionary doctrines – entirely consistent with international law – that foreclose this possibility on a case-by-case basis.[24] The federal act of state doctrine as

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[24] The objection also fails in its factual premise, because the foreign governments involved presented no objection to the courts in the paradigmatic cases cited by this Court in *Sosa*, and there have been cases in which a foreign government not only did not object to ATS litigation involving conduct within its territory but affirmatively urged the court to hear the case. *See e.g.*, Brief of the United States of America as Amicus Curiae, *Sison v. Marcos*, 878 F.2d 1439 (No. 86-2496), at 32 ("It is the view of the Department of State that the entertainment of these suits would not embarrass the relations between the United States and the Government of the Philippines.

articulated by this Court prohibits U.S. courts from determining the legality of a foreign government's official acts within its own territory. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964). The doctrine is not required by international law, *id.* at 421-22, but it clearly serves international comity and Constitutional values by assuring that the courts do not interfere in the diplomatic relations of the United States. When ATS cases have implicated a foreign government's official acts, they have been dismissed.[25] The government of the

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Indeed, *the Government of the Philippines has filed a brief amicus curiae arguing that these suits should be permitted to proceed in the district courts*) (emphasis supplied). *See also* Letter from J.T. Radebe, Minister of Justice and Constitutional Development of South Africa, to Hon. Judge Shira A. Scheindlin, U.S. District Court, Southern District of New York (Sept. 1, 2009) ("The Government of the Republic of South Africa, having considered carefully the judgment of the United States District Court, Southern District of New York is now of the view that *this Court is an appropriate forum to hear the remaining claims of aiding and abetting in violation of international law*") (emphasis supplied).

[25] *Doe v. Qi*, 349 F.Supp.2d 1258 (N.D.Cal. 2004) (challenging China's treatment of Falun Gong practitioners in China); *Matar v. Dichter*, 563 F.3d 9 (2d Cir. 2009) (challenging actions by Israeli general that were "in furtherance of official policies of the State of Israel"). Of course, *inter alia* if the actions alleged are not official acts of the government, then the act of state doctrine cannot apply. *W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp., Intern.*, 493 U.S. 400, (1990); *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682 (1976). Oddly, though Respondents' *amici* raise the specter of such intrusive judgments, they do not even cite *Sabbatino*, its progeny, or the act of state doctrine generally as a way of avoiding the problem in the first place. *Chevron Amicus Br., passim.*

United States has had a privileged but not dispositive voice in assuring that domestic litigation did not frustrate its diplomatic goals[26] or its national security concerns,[27] and the courts have shown substantial deference to such judgments. But the deference has never been absolute, on the grounds that the courts apply the law even in high-profile cases and that the separation of powers will not allow an Article II institution to direct an Article III institution how or when to exercise its jurisdiction.[28]

Not one of these case-by-case doctrines violates international law, and each clearly applies in ATS cases, as in any other transnational case in U.S. courts.

D. Nothing in International Law or the ATS Overrides the Exhaustion of Local Remedies Doctrine.

Under international law, some claims are not ripe until all the local remedies where the injury occurred have been exhausted. The exhaustion requirement has generally been a precondition for bringing an international claim to an international

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[26] *Cf. National City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 768-770 (1972) (opinion of REHNQUIST, J.).

[27] *See e.g. Mohamed v. Jeppesen Dataplan, Inc.*, 563 F.3d 992 (9th Cir. 2009).

[28] *Baker v. Carr*, 369 U.S. 186,211 (1962) ("it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.")

judicial or arbitral tribunal, and it has been deemed fulfilled when there are no meaningful local remedies to exhaust or where the prospect of a remedy is illusory. According to the Articles on Diplomatic Protection, adopted by the International Law Commission,

> Local remedies do not need to be exhausted where: (a) There are no reasonably available local remedies to provide effective redress, or the local remedies provide no reasonable possibility of such redress; (b) There is undue delay in the remedial process which is attributable to the State alleged to be responsible; (c) There was no relevant connection between the injured person and the State alleged to be responsible at the date of injury; (d) The injured person is manifestly precluded from pursuing local remedies; or (e) The State alleged to be responsible has waived the requirement that local remedies be exhausted.

Id., at Article 15.[29]

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[29] United Nations, Report of the International Law Commission, *Articles on Diplomatic Protection*, U.N. Doc. A/61/10, 58th Sess. (1 May-9 June and 3 July-11 August 2006), at 20 *et seq.* The exhaustion requirement is the mirror image of the *forum non conveniens* doctrine: neither applies if the alternative forum is futile or non-existent. But in the appropriate case, the exhaustion doctrine – like *forum non conveniens* – would assure that ATS cases not properly in U.S. court would not remain there.

Some courts with ATS cases have considered adapting the exhaustion requirement as a precondition to proceedings in the United States, as this Court hinted it might do in *Sosa*. 542 U.S. at 730, 732 n. 21. In the aftermath of *Sosa*, the circuit courts of appeals have not agreed on the scope or applicability of a prudential exhaustion requirement. *Compare Sarei*, 550 F.3d at 830-831 (imposing such a requirement) *with Jean v. Dorelien*, 431 F.3d 776, 781 (11th Cir. 2005) (rejecting such a requirement).

The essential point is that international law allows courts with ATS cases to consider whether the exercise of jurisdiction is proper on a case-by-case basis, by assessing the availability and openness of meaningful alternative remedies in the State where the violation occurred. In prior submissions, Respondents' *amici* have failed even to cite this possibility as a way of protecting the legitimate prerogatives of foreign sovereigns. *See e.g., Chevron Amicus Br., passim*.

E. Nothing in International Law or the ATS Overrides the Requirement of Proximate Cause or the Pleading Requirements of *Iqbal*.

The *Lotus* sovereignty principle, *supra*, leaves the United States "a wide measure of discretion" in developing its legal rules, so long as they do not contravene existing rules of international law (including *inter alia* the obligation to provide a remedy). Other

than that minimal principle, nothing in international law constrains the obligation in every federal action that plaintiffs must satisfy the strict pleading requirements of *Ashcroft v. Iqbal*, 556 U.S. 662, 680–81 (2009). The adequacy of the pleading under *Iqbal* is tested at the earliest stage, like other pre-trial hurdles. In addition, the plaintiffs bear the burden of demonstrating as a matter of law that the norm at issue satisfies the *Sosa* test and as a matter of fact that the defendant is in some way linked to their injury. If the territoriality restriction is intended as some technique for screening out frivolous ATS suits, that function is already served by existing doctrines that test the pleading on a motion to dismiss and the adequacy of the case itself on summary judgment if the facts are not in dispute.

F. *Per Se* Barriers to ATS Litigation Not Already Explicitly in the Text of the Statute Are for the Congress to Legislate, Not This Court.

Adopting the categorical bar sought by Respondents and their *amici* would be tantamount to a judicial repeal of a jurisdiction Congress has never restricted in any way. Even as ATS cases have proliferated over the years naming different kinds of defendants and advancing different kinds of international claims arising within the territory of many different nations, Congress has done nothing to cut back on ATS cases that advance claims based on

extraterritorial conduct. To the contrary, in the Torture Victim Protection Act, 28 U.S.C. § 1350 note ("TVPA"), Congress extended *Filartiga*-like protections to U.S. citizens with the explicit understanding that it would apply to foreign countries. And lest Respondents try to infer some limitation on the ATS from the extension of the TVPA to foreign torture, it bears repeating that Congress explicitly clarified that nothing in the ATS cut back on the ATS as interpreted in *Filartiga*.[30]

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[30] *See* Sen. Rep. No. 102-249, at 4-5 (1991) ("section 1350 has other important uses and should not be replaced," citing *Filartiga* with approval, and acknowledging the right of States under international law to provide domestic remedies for foreign violations of international law); H.R. Rep. No. 102-367(I) (1991), at 4 (approving *Filartiga*). Nothing in *Mohammed v Palestinian Auth.*, 132 S. Ct. 1702 (2012), even hints that jurisdiction under the ATS is limited by the TVPA.

CONCLUSION

The stark choice now presented to the Court is between a traditional, case-specific approach to ATS cases that is grounded in *Sosa* and consistent with international law *versus* a new blanket rule not supported by the text of the ATS and rejected by every court to which it has been presented. *Amici* respectfully urge the Court to preserve the statute as interpreted in *Sosa* and *Filartiga*, thereby maintaining this Nation's historic commitment to the international rule of law and assuring in a modest number of cases that international rights are backed by meaningful domestic remedies.

Respectfully submitted,

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APPENDIX

LIST OF AMICI

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Cherif Bassiouni is a Distinguished Research Professor of Law Emeritus at DePaul University College of Law and president emeritus of the law school's International Human Rights Law Institute. He has served the United Nations in several capacities, including most recently as the Chair of the Commission of Inquiry on Libya. He

also served as a member, then chairman, of the Security Council's Commission to Investigate War Crimes in the Former Yugoslavia (1992-1994); vice-chairman of the General Assembly's Ad Hoc and Preparatory Committees on the Establishment of an International Criminal Court (1995 and 1998); chairman of the Drafting Committee of the 1998 Diplomatic Conference on the Establishment of an International Criminal Court; independent expert for the Commission on Human Rights on The Rights to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (1998-2000); and independent expert for the Commission on Human Rights on the Situation of Human Rights in Afghanistan (2004-2006). In 2007, he was awarded the Hague Prize for International Law for his "distinguished contribution in the field of international law."

Gaspar Biro is Professor of International Relations at the Institute of Political Sciences, Faculty of Law, Eötvös Loránd University Budapest. From 1993-1998, he was the Special Rapporteur of the United Nations Commission on Human Rights on the situation of human rights in the Sudan, and from 2004-2006, he served as a member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights.

Douglass Cassel is Professor of Law and Notre Dame Presidential Fellow at Notre Dame Law School, where he teaches international human rights law and related courses. His scholarship on the civil liability of corporations for violations of international human rights law has been cited by several appellate and district court opinions. A former member of the Executive Council of the American Society of International Law, he has served as advisor on international human rights law to the United Nations, the Organization of American States, and the United States Department of State.

Andrew Clapham is Professor of Public International Law, Graduate Institute of International and Development Studies, Geneva, Switzerland. His current research and publication relates to the role of non-state actors in international law and related questions in human rights and humanitarian law. His publications include *Human Rights: A Very Short Introduction* (2007), *Human Rights Obligations of Non-State Actors* (2d ed. 2006), and *International Human Rights Lexicon* (2005), with Susan Marks. He is the author of the seventh edition of Brierly's Law of Nations (Oxford University Press, forthcoming 2012).

Lori Fisler Damrosch is Hamilton Fish Professor of International Law and Diplomacy and Henry L. Moses Professor of Law and International Organization at

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Constance de la Vega is Professor of Law at the University of San Francisco, where she teaches international human rights law and directs the Frank C. Newman International Human Rights Law Clinic. In the latter capacity, she has contributed to the procedure adopted at the U.N. Human Rights Council for the mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises. She is co-author of International Human Rights Law: An Introduction, as well as numerous articles on the application of international human rights law in the United States. She recently co-authored *Holding Businesses Accountable for Human Rights Violations: Recent Developments and Next Steps*, which was published by Friedrich Ebert Stiftung in Germany.

John Dugard is a member of the Institut de Droit International and the United Nations International Law Commission. From 2002 to 2008, he served as Judge *ad hoc* in the International Court of Justice. He has also served as Special Rapporteur to the United Nations Commission on Human Rights on the Violation of Human Rights and International Humanitarian Law in the Occupied Palestinian Territory. He has held the

Chair in Public International Law at the University of Leiden since 1998. He is also a Professor of Law in the Centre for Human Rights of the University of Pretoria, South Africa. He has held visiting positions in the United States (Princeton, Duke, Berkeley and Pennsylvania), Australia (New South Wales) and England (Cambridge). From 1995-1997 he was Director of the Lauterpacht Research Center for International Law, Cambridge.

Richard Goldstone served as the first chief prosecutor of the United Nations International Criminal Tribunal for the former Yugoslavia and for Rwanda. He was then appointed to the Constitutional Court of South Africa, to which he had been nominated by President Nelson Mandela. He has taught at a variety of U.S. and foreign law schools, including Fordham, Harvard, Georgetown New York University, and Stanford. He chaired the Independent International Commission on Kosovo and was a member of the Volcker Committee, appointed by UN Secretary General Kofi Annan, to investigate the Iraq Oil for Food program. In 2009, Goldstone led an independent fact-finding mission created by the UN Human Rights Council to investigate international human rights and humanitarian law violations related to the Gaza War. He has received the International Human Rights Award of the American Bar Association, the Thomas J. Dodd Prize in International Justice and Human Rights, and the MacArthur Award for International Justice.

Ryan Goodman is the Anne and Joel Ehrenkranz Professor of Law and Director of the Center for Human Rights and Global Justice at NYU Law School. He was the Rita E. Hauser Professor of Human Rights and Humanitarian Law and the Director of the Human Rights Program at Harvard Law School. Among other works, he is the author of *International Human Rights in Context* (Oxford University Press, 2008) (with Henry Steiner & Philip Alston), *Understanding Social Action, Promoting Human Rights* (Oxford University Press, forthcoming) (ed. with Derek Jinks and Andrew K. Woods); *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press, 2012) (ed. with Thomas Pegram). He is a member of the Council on Foreign Relations and a member of the Department of State's Advisory Committee on International Law..

Chip Pitts is Lecturer in Law at Stanford Law School, Professorial Lecturer with the George Washington Law School/Oxford University Joint Summer Program on Human Rights, and Professorial Fellow at the SMU Law Institute of the Americas. He co-authored *Corporate Social Responsibility: A Legal Analysis* (2009). A frequent delegate of the US government and leading NGOs to the United Nations, he is former Chair of Amnesty International USA and former president of the Bill of Rights Defense Committee, on whose board he continues to serve. His other board and advisory board roles including the Business and Human Rights Resource Center, Lawyers for Better Business, and the

Electronic Privacy Information Center (EPIC), *inter alia*.

Dinah Shelton holds the Manatt/Ahn Professorship in International Law at the George Washington University Law School. Professor Shelton is the author of three prize-winning books and numerous other articles and books on international law, human rights law, and international environmental law. She is a member of the board of editors of the *American Journal of International Law*. She has served as a legal consultant to many international organizations. In June 2009, the General Assembly of the Organization of American States elected her to a four year term as a member of the Inter-American Human Rights Commission. Since, 2010 she has served as president of the Commission.

David S. Weissbrodt is the Regents Professor and Fredrikson & Byron Professor of Law at the University of Minnesota. He served as a member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights (1996 to 2003), as chairperson of the Sub-Commission (2001), as one of the principal authors of the Sub-Commission's "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights" (2003), and as the United Nations Special Rapporteur on the rights of non-citizens from 2001 to 2003. He is co-author of *The Role of the United States Supreme Court in Interpreting and Developing*

Humanitarian Law, 95 Minn. L. Rev. 1339 (2011) and International Human Rights: Law, Policy, and Process (LexisNexis 4th ed. 2009).